

jurnal

by Syafriadi 8

Submission date: 11-Feb-2021 04:07PM (UTC+0800)

Submission ID: 1506994097

File name: 10407_Syafriadi_2019_E_R_1.pdf (213.74K)

Word count: 4057

Character count: 22392



2

International Journal of Innovation, Creativity and Change. www.ijicc.net

1

Volume 10, Issue 4, 2019

Conception and Implementation of Freedom of Speech and Expression in Indonesian Legal Studies

Syafriadi^a, Heni Susanti^b, ^{a,b}Faculty of Law, Universitas Islam Riau, Email:

^asyafriadi@law.uir.ac.id, ^bheni@law.uir.ac.id

Freedom of speech and expression are characteristics of a democratic country whose implementation is guaranteed by the United Nations Constitution and the Declaration of Human Rights. John Stuart Mill's theory states, the wider freedom of expression is opened in a society, the society will be more advanced and developed. In the Declaration of Human Rights, these two freedoms (freedom of speech and expression) are the basic rights of every citizen, whose implementation is regulated according to applicable regulations. This paper attempts to study the conception of freedom of speech and express opinions in two different laws, namely Indonesia and Malaysia, by using a normative legal approach, which analyses legally various laws and regulations in both countries, and interprets data based on theories to explain freedom of speech and expression from different points of view.

Key words: *Freedom of speech and expression, democracy and human rights.*

Introduction

Since man was born he has gained freedom, and that freedom is a basic human right. In the conception of the State, the law of the government is obliged to maintain and protect the freedom of its citizens, so that these citizens can freely exercise their rights. It is realised that although the State is mandated to care for freedom, not all citizens can freely exercise their rights. A number of abuses or violations of the use of rights both by individual communities and due to negligence of the State was found, and this happens for several reasons which are motivated by the socio-political conditions of a State.

Freedom of speech and expression are fundamental elements in democracy. The Universal Declaration of Human Rights, which was born from a joint international agreement is a recognition of human rights. The recognition then becomes the basis for each State implementing freedom, justice and world peace. In Article 2 of the UDHR, it is emphasised that everyone has the right to all rights and freedoms set forth in this Declaration with no exceptions whatsoever, such as differences in race, colour, sex, language, religion, politics or other views, origin national or social proposal, property rights, birth or other position. Then



Article 19 states, "Everyone has the right to own and issue opinions freely. This right also includes the freedom to have opinions without interference, as well as the right to seek, and receive information and ideas from the media. (https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi-\$R48R63.pdf).

John Stuart Mill, an English philosopher in the 17th century, was very determined to fight for freedom (Hamid Basyaib, *Membela Kebebasan*, (Jakarta : Freedom Institute, 2006) He said, "The broader the freedom of expression is opened in a society or civilisation, the society or civilisation is more advanced and developed". Freedom of speech and opinion is very important to be maintained and protected, so that the distribution of thoughts and views of the community to the government related to social issues and government performance, goes well within the corridor of applicable laws and regulations. Blockage of freedom of speech and expression can result in loss of control power and lead to authoritarianism in the administration of government. Conversely freedom of speech and expression that is too strict and excessive by the security forces, often leads to anarchist actions or physical clashes between the aspirants and the security officers. To avoid the occurrence of anarchist actions and for freedom of speech and expression to run properly, wisdom is needed from both the aspirant and the security officers who guard the aspirations. As John Stuart Mill said, the wider the freedom of expression is opened, the more advanced society will develop. Likewise, with the security forces, the wiser they carry out their duties, the more their aspirations are conveyed to the State. This is because freedom is a conception of political philosophy and recognises conditions where individuals have the ability to act in accordance with their wishes (Rizki Ariestandi Irmansyah, 2013)

Problem Formulation

What is the conception and implementation of freedom of speech and expression in Indonesian law?

Research Methods

The discussion on this study is a normative legal research using several legal materials, both primary, secondary and tertiary legal materials. Primary legal material was obtained from a number of statutory regulations such as the 1945 Constitution, Declaration of Human Rights, Law Number 9 of 1998 concerning Freedom of Expression in Public, and Law Number 39 of 1999 concerning Human Rights. While the secondary material is obtained from materials that can support the authors understand the primary legal material. While the tertiary legal material the author gets from a dictionary or encyclopaedia. The data from the three materials will be described by the author to analyse the implementation of freedom of speech and expression in the Indonesian state administration.



Discussion Results

Conception of Freedom of Speech and Expression

As a country of law, Indonesia has experienced a very rapid development of state law. This development was driven by a process of democratization, which changed the joints of government administration, including changes in the conception of freedom of speech and expressing opinions in public. The basic principles of democratic law are realised in the form of recognition and guarantee of human rights. This is expressly stated in the 1945 Constitution article 1 paragraph (3) which states, "The State of Indonesia is a state of law". The conception of the rule of law states that all policies and conduct of state administrators and citizens must be based on law. The law does not legitimise the arbitrary actions of state administrators who place power above all things. In a modern state, law generally covers all people who are within their territorial boundaries (H.L.A Hart, 1997).

Freedom of speech is freedom that refers to a right to speak freely without censorship or restrictions, but does not include spreading hatred. Manifestation of the implementation of freedom of speech is carried out by expressing opinions on social problems that develop in the community in various aspects of life, both in closed spaces such as seminars, discussions and the like, as well as in open spaces such as demonstrations taking to the streets or free speech. Even though freedom of speech is a right for every citizen to express their opinions openly, such freedom must still be limited by laws and regulations. Article 28 of the 1945 Constitution states that freedom of association and assembly, speaking out orally and in writing and so forth are determined by law. The regulation that is derived from the legal umbrella of freedom of speech is Law Number 9 of 1998, concerning Freedom of Expression in Public. In addition to that law there is also Law Number 39 of 1999, concerning Human Rights and Law Number 40 of 1999, concerning the Press. The way to express an opinion in public can be done with demonstrations, marches, public meetings and free speeches. Submission of public opinion is carried out in places open to the public, except in the presidential palace, places of worship, military installations, hospitals, airports, railway stations, land transportation terminals and national vital objects. Perpetrators or participants in public opinion are prohibited from carrying objects that can endanger public safety.

Beyond these regulations, there is also a Declaration of Human Rights, which in article 19 states that "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The normative formulation of the UN Charter was followed up by the United Nations, by issuing UN General Assembly Resolutions through article 19 of the International Covenant, which regulates Civil and Political Rights, in which the UN regulates matters that become civil rights. These four things include: First, everyone has the right to opinion without interference (other parties). Second, everyone has the right to freedom of expression; this right includes freedom to seek, receive and provide information and ideas of any kind, regardless of restrictions, either orally, in writing, in print,



in the form of artwork or through other media according to his/her choice. Third, the exercise of the rights contained in paragraph 2 of this article, also carries with it, special obligations and responsibilities. Therefore certain restrictions can be imposed, but this (limitation) can only be done in accordance with the law and as long as necessary to: respect the rights or reputation (reputation) of others and protect national security, public order, health or public morals.

Implementation of Freedom of Speech and Expression

Post-Presidential Election and Legislative General Election in 2019 demonstrations or demonstrations from various elements of society are very common. In addition to Jakarta, rallies took place also in various regions in Indonesia. In the author's study there were at least three waves of demonstrations with various themes. First, demonstrations over the holding of presidential and vice-presidential elections, ranging from vote-counting by the General Election Commission to the resolution of disputed election results in the Constitutional Court (April-June 2019) which won the Joko Widodo pair with KH Ma'ruf Amin and rejected Prabowo's lawsuit Subianto-Sandiaga Uno. The public or the masses who are against Prabowo-Sandiaga Uno consider the results of the counting of the presidential and vice-presidential elections to be coloured by fraud. National Winning Agency (BPN) Prabowo Subianto-Sandiaga Uno considers the 2019 General Election to be the worst election during the democratic party in Indonesia. The demonstration, which was centred in front of the Jakarta Election Supervisory Body's Office, ended in chaos between the protesters and security officers. The Indonesian National Police recorded 7 people died as a result of the riots (21-22 May 2019). One of the dead was identified as being hit by live ammunition (Nasional Kompas, 2019)

Second, demonstrations in Papua and West Papua were triggered by alleged acts of racism against Papuan students in Malang and Surabaya on 15-16 August 2019. Demonstrations took place in several cities such as Manokwari, Sorong, Timika, Fakfak, Deiyai, and Jayapura. The demonstration was a form of anger among the Papuan people for the humiliation of a group of people towards Papuan students in East Java. Outside Papua residents also vented their anger by holding a demonstration in front of the Jakarta State Palace. Demonstrations also took place in Wamena in September 2019, where the trigger was allegedly racially spoken words from a teacher to students in Wamena. The anarchist demonstration reportedly led to the burning of residents' houses, government offices, PLN and several community-owned kiosks. National Police Chief Gen. Tito K Jarnvian informed that his party had found several bodies in Wamena. "As many as 26 people died, 22 people were migrants from Papua", said Tito.

Third, widespread tens of thousands of students in various regions, demanded the cancellation of the Draft Law on the Criminal Code and the Corruption Eradication Commission Law as well as several other bills. This action was spearheaded by the Student Executive Board from various universities, and then led to clashes between the protesters and security officers. From this action two students were declared dead, namely Immawan Randy and Yusuf Kardawi from



Halu Oleo University (UHO) Kendari, with the suspected death of the student. There is a strong suspicion that Immawan Randi died after being shot by live ammunition during a demonstration in Southeast Sulawesi DPRD together with thousands of other students from Kendari City.

In the discussion of freedom of speech and expression, when referring to the three demonstration models above in the John Stuart Mill Theory, which states that the broader the freedom of expression is opened, the more advanced society and development, the state actually has not guaranteed civil rights to run well. If the state has not provided guarantees for the implementation of civil rights, the country cannot be said to be a democratic state. This can be concluded from the fall of the victims, both dead and injured, due to physical clashes between protesters and security officers, when the protesters convey their rights, which are guaranteed by the constitution and various other laws and regulations. The emergence of anarchist actions in the implementation of this demonstration is a consequence that must be faced as a result of the blockage of the channel of civil rights, which in its implementation is strictly guarded or excessive by the State.

5 Law Number 9 of 1998, concerning Freedom of Expression in Public, Law Number 39 of 1999, concerning Human Rights and Law Number 40 of 1999, concerning the Press which guarantees civil rights in speech and expression, are legal products born in the government system of democracy. All of these laws became a new milestone for the start of a democratic-style civil leadership after 32 years of authoritarian rule, with a strong characteristic of imposing obligations on the people, but weak on the protection, respect and fulfillment of rights. From here begins the process of changing the politics of law to the politics of democratic law. The law is essentially a political product. That is, at the implementation stage, there may be certain demands, which by the rule of law, must be carried out, but by political configuration. Such things are not done, or vice versa, and there is something that is not offered in official legal rules, but which is raised by dominant political power holders.

If the legal products born in the democratic system of government are strengthened by John Stuart Mill's Theory, freedom of speech and expression will not cause victims, and the public can freely aspire their views and thoughts dynamically. Conversely, if freedom of speech and expression is inhibited or controlled repressively, then what happens is an anarchist action because the community feels that civil rights are restricted. The politics of democratic law opens opportunities for people to actively participate (Suparman marzuki, 2014) and its implementation is based on values:

1. Resolving disputes in a peaceful and an institutionalised manner (institutionalised powerful settlement of conflict);
2. Ensuring the implementation of peaceful changes in a society that is changing (peaceful change in a changing society);
3. Organising leadership changes regularly (orderly succession of rulers);
4. Limiting the use of violence to the minimum (minimum of coercion);



5. Recognising and assuming the diversity in society that is reflected in the diversity of opinions, interests and behaviours, guaranteeing justice (Hendry B. Mayu, 2017).

The handling of demonstrations by the police is closely related to legal culture (legal behaviour), namely the attitude of the apparatus¹⁷ in handling demonstrations, that must be in accordance with the Police Act and the Police Code of Ethics. In carrying out their duties they should make various sets of regulations as guidelines in law enforcement, so that anarchist actions in handling demonstrations can be avoided. The legal culture is also influenced by orders or laws issued by officials with legal authority. This is in line with the development of the legal system of LM Friedman, which relies on three aspects, namely the legal substance, legal structure, and legal culture, which are inter-related. The substance of law is the rules, norms and patterns of real human behaviour within the system²¹ (L.M Friedman, The legal system: A Social Science Perspective, 2011).

Conflicts that resulted in casualties in presidential and vice presidential election rallies, demonstrations in Papua, West Papua and Wamena, and student rejection of the Criminal Code Bill and the KPK Bill cannot be separated from the arrogance of power that tends to be exhibited by the State by mobilising a lot of power in front of the people or college students. In addition to the strength of the police and military personnel who are equipped with weapons, are also various types of vehicles, and this can make the protesters feel uncomfortable and unsafe. With every opportunity to face the student movement, the TNI and Polri always provoke demonstration actions that actually carry constructive critical ideas conceptually and intelligently, to be shifted into physical collision actions, so that the TNI and Polri carry out acts of violence and physical torture both directly or indirectly (Rum Aly, 2004).

In addition to the above, the clash between the protesters and security officers was also triggered by other factors, such as ineffective communication between the security unit team leader and the field coordinator on the part of students, as well as the reluctance of policy makers to engage in dialogue with protesters during demonstrations. The emergence of third parties or intruders who use the pure movement of protesters for certain interests, is also a trigger factor for clashes in the field.

The media as a conveyor of information to the public in certain matters in the country, also contributed to the heat of democratic temperatures. Press reports tend to be biased and do not⁴ adhere to the basic principles of journalism contained in Article 5 of the Press Law, namely: 1) The national press is obliged to report events and opinion with respect to religious norms and the sense of public decency and the principle of presumption of innocence; 2) The press must serve the Right to Answer; 3) The press⁶ must serve the Right to Reject, and Article 6 which states that the National Press carries out its role as follows: i) the community's right to know; ii) upholding the basic values of democracy, promoting the manifestation of the rule of law, and human rights, and respecting diversity; ii) developing general opinions based on



appropriate, accurate and correct information; iv) conducting supervision, criticism, correction and suggestions on matters relating to the public interest; v) fighting for justice and truth.

The case of the murder of Immawan Randy allegedly shot during a demonstration in Kendari indicates that the police used repressive methods in carrying out their duties in the field. According to the Chairman of the South Kalimantan Muhammadiyah Student Association, Ahmad Zaini, the repressive actions of the authorities against students until their death, had greatly hurt the hearts of the people, especially IMM cadres throughout Indonesia. Zaini considered, the use of live ammunition against demonstrations in Southeast Sulawesi would violate the Standard²³ Operating Procedure (SOP) set (<https://kumparan.com/banjarnhits/demonstran-randi-tewas-imm-kalsel-sebut-polisi-salahi-sop-lrwfeKYjkFP>). Randy's death also invited public concerns over the patterns of handling demonstrations by the police, including from President Joko Widodo, who then asked the police not to be repressive in handling the demonstration. In handling demonstrations the police are prohibited from being arrogant and provoked by the behaviour of the masses, carrying out acts of violence that are not in accordance with procedures, carrying equipment outside of Dalmas equipment, carrying sharp weapons and live ammunition, leaving the Unit / Formation and carrying out individual mass chases, backing away the masses of protesters, saying dirty words, sexual harassment / immoral acts, cursing protesters and doing other actions that violate the laws and regulations.

Conclusion

⁸ In a democratic country every citizen has the right to speak and express an opinion whose limitations and implementation are governed by the legislation in force. The aim is that state administrators do not make deviations in leading the way the government, and policies that are born from the state, are always guided by the law. As a constitutional state, Indonesia²⁴ has a comprehensive conception in guaranteeing and protecting civil rights in the field of freedom of speech and expression, contained in the 1945 Constitution²⁷, as well as various other regulations as operational regulations. The¹⁶ regulation is Law No. 9 of 1998, concerning Independence Expressing Opinion in Public, Law No. 39 of 1999, concerning Human Rights, Law No. 40 of 1999, concerning the Press and TAP MPR No. XVII / MPR / 1998, concerning Human Rights. Freedom of Speech and Expression actually does not cause casualties if the implementation of supervision in the field is carried out according to the applicable provisions, and the protesters channel their aspirations in an orderly, unemotional manner and do not destroy infrastructure that can ignite behaviours leading to anarchist actions. Persuasive approaches that rely on local culture in handling demonstrations need to be developed by the police in giving pass to demonstrators expressing their constructive critical attitude in speaking and expressing opinions.



REFERENCES

- Hamid Basyaib, *Membela Kebebasan*, Jakarta : Freedom Institute, 2006.
- Hendry B Mayu, dalam Syafriadi, *Hukum Pers Dalam Ketatanegaraan Indonesia*, Yogyakarta, Suluh Media.
- H.L.A Hart, *Konsep Hukum*, Penerjemah M. Khozin, Bandung, Nusa Media, 1997.
- Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Jakarta: PT Bhuana Ilmu Populer, 2009
- Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Jakarta: PT Bhuana Ilmu Populer, 2009
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Kordi, M. Ghufuran. (2013). *Human Rights regarding Slavery, Justice, Humanity Crimes and War*. Yogyakarta: GRAHA SCIENCE.
- Kosandi, Meidi. 2015. "Human Trafficking in Southeast Asia: Finding Collective Solutions through ASEAN." (May).
- Minin, Darwinsyah. 2011. "Strategies for Handling Trafficking in Indonesia." *Kanun Journal of Legal Studies* 13 (54): 21–31
- Mufidah. (2011). *Why Are They Traded?* (M. Sholehudin, Ed.) Malang: UIN-MALIKI Press.
- Muflichah, S., & Bintoro, R. W. (2009, January 1). Trafficking: A Study of Trafficking in Women From Social, Cultural and Economic Aspects in Banyumas Regency. *Journal of Legal Dynamics*, 125-126.



- Novianti. 2014. "Criminal Acts on Trafficking in Persons, Crossing National Borders i. Introduction Human Trafficking (. " Journal of Legal Studies: 50–66.
- Prakoso, A. R., & Nurmalinda, P. A. (2018, January 24). Legal Policies Against Crimes of Trafficking in Persons. National Seminar on Law at Semarang State University, 4, 3.
- Prasongko, D. (2012, December 18). <http://www.balairungpress.com/2012/12/perdrading-manusia-di-asean/>. Retrieved September 15, 2019, from www.balairungpress.com: <http://www.balairungpress.com>
- Prakoso, A. R., & Nurmalinda, P. A. (2018, January 24). Legal Policies Against Crimes of Trafficking in Persons. National Seminar on Law at Semarang State University, 4, 3.
- M Friedman, The legal system: A Social Science Perspective, Terjemahan, M.Khozim, Sistem Hukum: Perspektif Sosial, cetakan IV, Bandung: Nusa Media, 2011.
- Peiroll Gerard Notanubun, Tinjauan Yuridis Terhadap Kebebasan Berbicara Dalam Ketentuan Pasal 27 ayat (3) UU Nomor 11 Tahun 2008 Tentang ITE Dalam Hubungan Dengan Pasal 28 UUD 1945, Jurnal Ilmu Hukum, Alumni Fakultas Hukum Untag Surabaya, Edisi: Mei-Nopember, 2014.
- Rizki Ariestandi Irmansyah, Hukum, Hak Asasi Manusia, dan Demokrasi , Yogyakarta : Graha Ilmu, 2013.
- Rum Aly, Menyilang kekuasaan militer otoriter, cetakan pertama (Jakarta:kompas, 2004).
- Suparman Marzuki, Pengadilan HAM di Indonesia Melanggengkan Impunity, Jakarta, Penerbit Erlangga, 2012.
- Suparman Marzuki, Tragedi Politik Hukum HAM, Yogyakarta, Pustaka Pelajar, 2011.
- Syafriadi, Kemerdekaan dan Tanggung Jawab Sosial Pers Dalam Negara Demokrasi Berdasarkan Undang Undang Nomor 40 Tahun 1999 tentang Pers, Disertasi Doktor dalam Bidang Ilmu Hukum Ptoqram Doktor Ilmu Hukum Pascasarjana Universitas Islam Bandung, 2013.
- W. Friedman, American law an intruduction, Dalam Achmad Ali, Menguak teori hukum dan teori peradilan, cetakan ketiga (Iakarta:Prenada media grup, 20101, hlm 143 11 UUD Negara Republik Indonesia 1945.

ORIGINALITY REPORT

24%

SIMILARITY INDEX

22%

INTERNET SOURCES

8%

PUBLICATIONS

11%

STUDENT PAPERS

PRIMARY SOURCES

1

www.ijicc.net

Internet Source

6%

2

Submitted to Southeast Community College

Student Paper

3%

3

archive.org

Internet Source

2%

4

repository.unair.ac.id

Internet Source

1%

5

Zaka Firma Aditya, Sholahuddin Al-Fatih.
"Indonesian constitutional rights: expressing and
purposing opinions on the internet", The
International Journal of Human Rights, 2020

Publication

1%

6

tobaccocontrollaws.saforian.com

Internet Source

1%

7

smpnegerisatuasologaima.blogspot.com

Internet Source

1%

8

mafiadoc.com

Internet Source

1%

9	aacc-asia.org Internet Source	1 %
10	Submitted to UIN Syarif Hidayatullah Jakarta Student Paper	1 %
11	Submitted to Universitas Brawijaya Student Paper	1 %
12	pressgrab.com Internet Source	1 %
13	Muslim Andi Yusuf, Dharma Fidyansari. "Interpretation Of Judges In Supreme Court Decision Number: 46 P/HUM/2018", Substantive Justice International Journal of Law, 2019 Publication	<1 %
14	medialandscapes.org Internet Source	<1 %
15	ejournal.bsi.ac.id Internet Source	<1 %
16	Submitted to Universitas Sang Bumi Ruwa Jurai Student Paper	<1 %
17	Suriyanto Suriyanto. "The Function of the Press Council in Supporting Legal Protection for Journalists to Actualise the Press Freedom", Journal of Politics and Law, 2020 Publication	<1 %

18

www.muslimahnews.com

Internet Source

<1 %

19

Submitted to Universitas Negeri Semarang

Student Paper

<1 %

20

www.savap.org.pk

Internet Source

<1 %

21

jurnal.umpar.ac.id

Internet Source

<1 %

22

www.zu.ac.ae

Internet Source

<1 %

23

kumparan.com

Internet Source

<1 %

24

beholdhecomes7.blogspot.com

Internet Source

<1 %

25

humanrights.gov.au

Internet Source

<1 %

26

Natasha Marcella Geovanny, Marchelina Theresia, Devina Felicia Widjaja. "Analysis of Revocation of Land Rights by the Government Reviewed from the Concept of Loss", Cepalo, 2019

Publication

<1 %

27

publishing-widyagama.ac.id

Internet Source

<1 %

28

journal.unnes.ac.id

Internet Source

<1 %

29

Avitus Agbor. "The Role of the Judiciary in the Promotion of Democracy and Human Rights in Cameroon", African Journal of Legal Studies, 2015

Publication

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On